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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/210,485	12/11/1998	PAUL MANSKY	65304-039	5370

7590 03/03/2003

Eric M. Dobrusin, Esq.  
Dobrusin Darden Thennisch Law Firm PLLC  
401 S. Old Woodward Avenue, Suite 311  
Birmingham, MI 48009

EXAMINER

WACHSMAN, HAL D

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/210,485	MANSKY ET AL.
	Examiner	Art Unit
	Hal D Wachsman	2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 09 December 2002.
- 2a)  This action is FINAL.                                    2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-6,8-10,12-17,19-21,23-25 and 113-152 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 1-6,8-10,12-17,19-21,23-25,114-118,120-124 and 126-130 is/are allowed.
- 6)  Claim(s) 113,119 and 125 is/are rejected.
- 7)  Claim(s) 131-152 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 27 February 2002 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some \*
  - c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>23, 25</u> .	6) <input type="checkbox"/> Other: _____



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09 / 210 488

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT      PAPER

34

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Hal D Wachsman  
Primary Examiner  
Art Unit: 2857

Art Unit: 2857

1. The Related Cases section on page 1 of the specification does not provide the current status of U.S. applications serial numbers 09/210,428 (i.e. this is now U.S. patent no. 6,477,479) and 09/210,086 (i.e. this is now U.S. patent number 6,438,497). Appropriate correction is required.

2. Page 78, lines 14-15, do not provide the current status of U.S. application serial no. 09/133,171 (i.e. this is now U.S. patent number 6,393,895). Appropriate correction is required.

3. The IDS filed 2-27-02 cited copending applications 09/863,532 and 09/858,048 did not comply with 37 C.F.R. 1.98(a)(2) which requires a legible copy of each cited pending U.S. application. No copies of the copending applications cited were provided and as copending applications 09/863,532 and 09/858,048 were not readily available to the Examiner these two copending applications could not be considered.

4. Claims 8, 10, 12, 23, 24, 120 and 125-152 are objected to under 37 C.F.R. 1.75(a) for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 8, line 2, cites "the thermal property" which lacks antecedent basis in claims 5 and 6. Claim 10, line 3, cites "said silicon nitride membranes" however the antecedent basis appears to be singular. This same type of problem also occurs in claim 133, line 3, claim 134, line 4. Claim 12, line 2, cites "said microthin film membrane" which lacks antecedent basis in claims 1-6. Claim 23, line 2, cites "the at least one thermal property" which lacks antecedent basis in claims 5 and 6. In claim 120, line 11, most of the line is blank after the words "said sensor". In claim 125, line 12, it appears that ";" and " is missing at the end of the line. This same type of

problem also occurs in claim 126, line 14, claim 127, line 14, claim 128, line 18, claim 129, line 17. Claim 129, line 13, cites "at least one property of a material" however the antecedent basis is "at least one electrical transport property of a material". This same type of problem also occurs in claim 130, line 12. In claim 130, line 17, it appears that the word "and" is missing at the end of the line. Claim 131, line 2, cites "the thermal property" however the antecedent basis is "at least one thermal property". In addition, "the thermal property" lacks antecedent basis completely in claims 117, 118, 123 and 124. Claim 134, line 2, cites "said microthin film membrane" which lacks antecedent basis in claims 119-124. Claim 143, lines 1-2, cite "the at least one thermal property" which lacks antecedent basis in claims 117, 118, 123 and 124. Claim 146, line 1, cites "The apparatus of claims 125, 126, 127, 128, 129 or 130" however because it is referring to "claims" (i.e. plural) it is not clear that this multiple dependent claim is depending from the claims cited in the alternative only to be a proper multiple dependent claim. Claim 146, line 2, cites "the electrical transport property" however the antecedent basis is "at least one electrical transport property". Claim 148, lines 1 and 3, cite "said leads" however the antecedent basis is "plurality of electrical leads". This same type of problem also occurs in claim 149, line 2. Claim 148, line 2, cites "said material samples" which lacks clear antecedent basis. This same type of problem also occurs in claim 149, lines 1-2. Claim 149, line 3, cites "said 5 or more samples" which lacks antecedent basis in claims 129 and 130. This same type of problem also occurs in claim 151, lines 2-3. The examiner asks the applicant to better claim the limitations cited above. While the examiner understands the intentions of the applicant he feels

confusion could be drawn from the limitations cited above. Appropriate correction is required.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 113, 119 and 125 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4, 1 and 2 respectively of U.S. Patent No. 6,477,479. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 4 of U.S. patent no. 6,477,479 cites "means for coupling said sensor array with electronic circuitry for sending signals to and receiving signals...". The interconnection device of claim 113 of the instant application is a means for coupling and the electronic circuitry for sending and receiving signals in claim 4 of the patent can also be considered to be an electronic platform as described in claim 113 of the instant application. The above reasons also

apply to claim 119 of the instant application with respect to claim 1 of the patent and also apply to claim 125 of the instant application and claim 2 of the patent.

7. Claims 1-6, 8-10, 12-17, 19-21, 23-25, 114-118, 120-124 and 126-130 are allowed subject to the appropriate correction of the 37 C.F.R. 1.75(a) objections noted above.

8. Applicant's arguments with respect to newly submitted claims 113, 119 and 125 have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 703-305-

9788. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

  
Hal D Wachsmann  
Primary Examiner  
Art Unit 2857

HW  
February 26, 2003